



Frederick Koster  
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Frederick Koster in Pro Per

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NEXT VIETNAM PROJECTS  
FOUNDATION, INC., ET AL  
Plaintiffs**

**v.**

**Case No.: 8:22-cv-2130- JWHDFM**

**RULE 15(A) AMENDED  
DEFENDANT'S ANSWERS,  
AFFIRMATIVE DEFENSES  
COUNTERCLAIM**

**KOSTER FILMS LLC,  
FREDERICK KOSTER, ET AL  
Defendants**

Defendant Frederick Koster states as follows:

**GENERAL DENIAL**

Pursuant to Rule 8(b), Fed. R. Civ. P., Defendant denies generally all claims not specifically admitted herein.

**INTRODUCTION**

1. Defendant denies each and every allegation in paragraph 1. Defendant denies that plaintiffs Radix Corporation (VVFH) and Saigon Broadcasting Television Network, Inc. (SBTN) which plaintiffs label and alleges are producers of the film. This allegation is repeated throughout the pleading and defendant denies each and every time this allegation is mentioned.

2. Defendant admits that the film and interviews are solely in possession of the defendants. Defendant denies each and every other allegation in paragraph 2.

3. Defendant admits that the individual plaintiffs listed in paragraph 3 agreed to appear in the film. Defendant denies each and every other allegation in paragraph 3.

4. Defendant admits that My Van International Inc gave permission to use stock footage from a film My Van alleges owns. Defendant denies each and every other allegation in paragraph 4.

5. Defendant denies each and every allegation in paragraph 5.

6. Defendant denies each and every allegation in paragraph 6.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations contained in paragraph 7.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations contained in paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations contained in paragraph 9.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations contained in paragraph 10.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth or the falsity of the allegations contained in paragraph 11.

80 12. Defendant is without knowledge or information sufficient to form a  
81 belief as to the truth or the falsity of the allegations contained in this paragraph 12.  
82

83 13. Defendant is without knowledge or information sufficient to form a  
84 belief as to the truth or the falsity of the allegations contained in paragraph 13.  
85

86 14. Defendant is without knowledge or information sufficient to form a  
87 belief as to the truth or the falsity of the allegations contained in paragraph 14.  
88

89 15. Defendant is without knowledge or information sufficient to form a  
90 belief as to the truth or the falsity of the allegations contained in paragraph 15.  
91

92 16. Defendant is without knowledge or information sufficient to form a  
93 belief as to the truth or the falsity of the allegations contained in paragraph 16.  
94

95 17. Defendant is without knowledge or information sufficient to form a  
96 belief as to the truth or the falsity of the allegations contained in paragraph 17.  
97

98 18. Defendant admits Koster Films LLC is an Arizona Limited Liability  
99 Company. Defendant denies each and every other allegation in paragraph 18.  
100

101 19. Defendant admits to paragraph 19.  
102

103 20. Defendant is without knowledge or information sufficient to form a  
104 belief as to the truth or the falsity of the allegations contained in paragraph 20.  
105

106 21. Defendant is without knowledge or information sufficient to form a  
107 belief as to the truth or the falsity of the allegations contained in this paragraph.  
108

109 22. Defendant denies each and every allegation in paragraph 22.  
110

### 111 **JURISDICTION AND VENUE**

112

113 Defendant is not contesting Jurisdiction and Venue.  
114

115 23. Defendant is without knowledge or information sufficient to form a  
116 belief as to the truth or the falsity of the allegations contained in paragraph 23.  
117

118 24. Defendant is without knowledge or information sufficient to form a  
119 belief as to the truth or the falsity of the allegations contained in paragraph 24.

120  
121 25. Defendant is without knowledge or information sufficient to form a  
122 belief as to the truth or the falsity of the allegations contained in paragraph 25.

123  
124 26. Defendant is without knowledge or information sufficient to form a  
125 belief as to the truth or the falsity of the allegations contained in this paragraph.

126  
127 27. Defendant is without knowledge or information sufficient to form a  
128 belief as to the truth or the falsity of the allegations contained in paragraph 27,  
129 lines 5 through 10. Defendant denies lines 11 through 18 of paragraph 27.

130  
131 **STATEMENT OF FACTS**  
132

133 28. Defendant is without knowledge or information sufficient to form a  
134 belief as to the truth or the falsity of the allegations contained in paragraph 28.

135  
136 29. Defendant admits to being director of the film. Defendant is without  
137 knowledge or information sufficient to form a belief as to the truth or the falsity of  
138 the allegations contained in paragraph 29.

139  
140 30. Defendant admits VVFH and SBTN were aware of Defendant from the  
141 Defendant being the director, writer and producer of the film "Ride the Thunder".  
142 Defendant denies all other allegations in paragraph 30.

143  
144 31. Defendant denies that any discussions of other possible projects from 5  
145 years ago is material to this lawsuit. Due to these discussions happening 5 years  
146 ago, Defendant is without specific knowledge or information sufficient to form a  
147 belief as to the truth or the falsity of the allegations contained in paragraph 31.

148  
149 32. Defendant denies each and every allegation in paragraph 32.

150  
151 33. Defendant denies that VVFH and SBTN are producers. Defendant is  
152 without knowledge or information sufficient to form a belief as to the truth or the  
153 falsity of the allegations contained in paragraph 33.

154  
155 34. Defendant denies that any actions that were done for other possible  
156 projects from 5 years ago are immaterial to this lawsuit. Defendant denies that  
157 VVFH and SBTN are producers. Due to these possible actions happening 5 years  
158 ago, Defendant is without specific knowledge or information sufficient to form a  
159 belief as to the truth or the falsity of the allegations contained in paragraph 34.

160  
161 35. Defendant admits My Van Corporation donated the use of historical  
162 footage to defendants. Defendant denies each and every other allegation in  
163 paragraph 35.  
164

165 36. Defendant admits that he is the director of the film. Due to this allegation  
166 being from over 5 years ago, Defendant is without specific knowledge or  
167 information sufficient to form a belief as to the truth or the falsity of the other  
168 allegations in paragraph 36.  
169

170 37. Defendant denies each and every allegation in paragraph 37.  
171

172 38. Defendant denies stating he was a Director for hire. Defendant denies  
173 that any discussions of other possible projects from 5 years ago pertain to this  
174 lawsuit and is immaterial. Due to the fact that this alleged interview happened over  
175 5 years ago, Defendant is without knowledge or information sufficient to form a  
176 belief as to the truth or the falsity of the allegations contained in paragraph 38.  
177

178 39. Defendant denies stating he was a Director for hire. Defendant denies  
179 that any discussions of other possible projects from 5 years ago pertain to this  
180 lawsuit and is immaterial. Due to the fact that this alleged interview happened over  
181 5 years ago, Defendant is without knowledge or information sufficient to form a  
182 belief as to the truth or the falsity of the allegations contained in paragraph 39.  
183

184 40. Defendant denies that any discussions concerning other possible projects  
185 from 5 years ago is immaterial. Due to the fact that this alleged correspondence  
186 happened over 5 years ago, Defendant is without knowledge or information  
187 sufficient to form a belief as to the truth or the falsity of the specific allegations  
188 contained in paragraph 40.  
189

190 41. Defendant admits that he interviewed and filmed interviews during 2018.  
191 Mr Pham acted as an interpreter for some of these interviews. Due to these  
192 interviews happening 5 years ago, Defendant is without knowledge or information  
193 sufficient to form a belief as to the truth or the falsity of the other allegations  
194 contained in this paragraph therefore denies all other allegations.  
195

196 42. Defendant admits to discussions with various individuals about the  
197 making of a feature documentary. Defendant denies each and every other  
198 allegation in paragraph 42.  
199

200 43. Defendant admits talking with individuals in reference to the making of  
201 the film. Defendant denies stating that the film would be distributed through the  
202 Next Vietnam Foundation. Inc., which did not exist at this time. Due to these  
203 alleged events happening over 4 years ago, Defendant is without knowledge or  
204 information sufficient to form a belief as to the truth or the falsity of other the other  
205 allegations contained in paragraph 43.

206  
207 44. Defendant admits correspondence with Nam Pham concerning the script  
208 that the defendant was writing. Defendant admits not sending a script to VVFH and  
209 SBTN. Defendant denies each and every other allegation in paragraph 44.

210  
211 45. Defendant admits that Mr. Pham, Dr. Hoang, Mr. D. Phan, Dr. T. Phan,  
212 Mr. S. Nguyen, Ms. T. Nguyen, and Ms. M. Nguyen agreed to participate in the  
213 Film. Defendant denies each and every other allegation in paragraph 45. In  
214 reference to the footnote for paragraph 45 (page 12, line 26). Defendant admits  
215 that M. Nguyen signed a Talent Release Form Contract. Defendant denies each  
216 and every other allegation in this footnote.

217  
218 46. Defendant admits providing a script to Mr. Pham. Defendant denies  
219 each and every other allegation in paragraph 46.

220  
221 47. Defendant admits that as a standard practice in the film industry, during  
222 the process of researching to make a documentary film that he talked with many  
223 people to ensure historical accuracy. Defendant admits he does not speak  
224 Vietnamese. Defendant denies each and every other such allegation in this  
225 paragraph.

226  
227 48. Defendant denies each and every allegation in paragraph 48.

228  
229 49. Defendant denies each and every allegation in paragraph 49.

230  
231 50. Defendant admits filming parts of the film in California. Due to these  
232 events happening over 4 years ago, Defendant is without knowledge or information  
233 sufficient to form a belief concerning the details of these interviews. Defendant  
234 denies each and every other allegation in paragraph 50.

235  
236 51. Defendant admits to paragraph 51.

238 52. Defendant admits filming interviews in California. Due to these  
239 interviews happening up 5 years ago, Defendant is without knowledge or  
240 information sufficient to form a belief concerning the details of these interviews.  
241

242 53. Defendant admits there were discussions with various individuals about  
243 the film. Due to these discussions happening up 5 years ago, Defendant is without  
244 knowledge or information sufficient to form a belief concerning the specific details  
245 of these discussions.  
246

247 54. Defendant admits on November 21, 2019, he sent a group email to  
248 individuals and the referenced Exhibit 7 appears to be the email the Defendant  
249 sent. Defendant denies that defendant's email was sent to VVFH or SBTN,  
250 Defendant denies that VVFH and SBTN are producers.  
251

252 55. Defendant denies each and every allegation in paragraph 55.  
253

254 56. Defendant admits sending email and Exhibit 8 appears to be that email.  
255 Defendant admits there were delays in post-production due to the Covid epidemic  
256 and scheduling conflicts. Defendant denies each and every allegation in paragraph  
257 56.  
258

259 57. Defendant admits a rough-cut version of the film was sent to certain  
260 individuals. Defendant denies the allegations of lines 18 to 24. Defendant is  
261 without knowledge or information sufficient to form a belief as to the truth or the  
262 falsity of the other allegations contained in paragraph 57.  
263

264 58. Defendant denies that VVFH and SBTN are producers. Due to this  
265 allegation dating back over 3 years, Defendant is without knowledge or  
266 information sufficient to form a belief as to the truth or the falsity of the allegations  
267 contained in paragraph 59 therefore denies each and every such allegation.  
268

269 59. Due to this allegation dating back over 3 years, Defendant is without  
270 knowledge or information sufficient to form a belief as to the truth or the falsity of  
271 the allegations contained in paragraph 59 therefore denies each and every such  
272 allegation  
273

274 60. Due to these alleged events happening about 3 years and plaintiffs not  
275 listing specific dates, Defendant is without specific knowledge or information  
276 sufficient to form a belief as to the truth of each and every allegation contained in  
277 paragraph 60.



278  
279 61. Defendant admits that Defendants' own the copyright of the film.  
280 Exhibit J appears to be a screen shot of the US Copyright registration. Defendant  
281 admits there was an attempted publication and distribution of the film by the  
282 Defendants in April of 2021 through various internet platforms, but all distribution  
283 was almost immediately shut down by plaintiff Ms. M. Nguyen when she sent  
284 copyright take down notices to the platforms distributing the film. Defendant  
285 denies the allegation that the defendants don't have the full rights to release the  
286 film. Due to this event happening over 2 years ago, Defendant is without specific  
287 knowledge or information sufficient to form a belief as to the truth of each and  
288 every allegation contained in paragraph.

289  
290 62. Defendant denies that VVFH and SBTN are producers. Defendant  
291 admits receiving an email from Ms M Nguyen in April 2021 that included a cease-  
292 and-desist letter that also included other threats.

293  
294 63. Defendant admits that there was another attempted publication and  
295 release of the film by the Defendants in April of 2021, but it was almost  
296 immediately stopped by plaintiff M. Nguyen when she fraudulently sent take down  
297 notices to the film distributing platforms. Defendant denies plaintiff's allegation  
298 that they do not own the copyright. Defendant is without knowledge or  
299 information sufficient to form a belief as to the truth other allegations contained in  
300 paragraph.

301  
302 64. Defendant admits that there was an attempted release of the film by the  
303 Defendants in April of 2021, but it was almost immediately stopped by plaintiff M.  
304 Nguyen when she fraudulently sent copyright take down notices to the platforms  
305 distributing the film. Defendant is without knowledge or information sufficient to  
306 form a belief as to the truth of each and every other allegation contained in  
307 paragraph 64.

308  
309 65. Defendant admits Ms. M Nguyen sent a demand letter that included  
310 threats to Mr. Tooker to intimidate him into sending the film interviews and any  
311 related film footage to the law firm she was employed with. Defendant is without  
312 knowledge or information sufficient to form a belief as to the truth of each and  
313 every allegation contained in paragraph.

314  
315 66. Defendant admits to paragraph 66.  
316



317 67. Based on Plaintiffs' Exhibit K, Defendant admits to the existence of this  
318 email from the Victims of Communism Memorial Foundation (VOC) stating that  
319 Defendants tried to donate the interviews and film to VOC. Defendant denies line  
320 "On information and belief, this was an attempt by Koster to barter away the Film,  
321 Interviews and other material that by rights belong to the Next Vietnam  
322 Foundation."

323  
324 68. Defendant denies paragraph 68.  
325

326 69. Defendant admits that the Interviews have not been sent. Defendant is  
327 without knowledge or information sufficient to form a belief as to the truth of each  
328 and ever Defendant is without knowledge or information sufficient to form a belief  
329 as to the truth of each and every allegation contained in paragraph.  
330

331 70. Defendant denies paragraph 70.  
332

333 71. Defendant denies committing fraud. Defendant admits that Richard  
334 Botkin contracted with Koster Films LLC to produce, direct and write the screen  
335 play for the aforementioned film. Defendant admits having copies of this film in  
336 his possession.  
337

### 338 **FIRST CAUSE OF ACTION** 339

340 72. Defendant repeats all answers of the foregoing paragraphs as if fully set  
341 herein.  
342

343 73. Defendant is without knowledge or information sufficient to form a  
344 belief as to the truth of each and every allegation contained in paragraph 73  
345

346 74. Defendant admits My Van allowed defendants to use historical footage  
347 that he claims to own for use in the Defendant's film. Defendant admits 12 seconds  
348 of this provided historical footage appears in the film. Defendant denies each and  
349 every other allegation in paragraph 74.  
350

351 75. Defendant admits that the film rights have not been assigned. Defendant  
352 denies each and other every allegation in paragraph 75.  
353

354 76. Defendant denies each and every allegation in paragraph 76.  
355

356 77. Defendant denies each and every allegation in paragraph 77.

357  
358 **SECOND CAUSE OF ACTION**  
359

360 78. Defendant repeats all answers of the foregoing paragraphs as if fully set  
361 herein.

362  
363 79. Defendant denies each and every allegation in paragraph 79.

364  
365 80. Defendant denies each and every allegation in paragraph 80.

366  
367 81. Defendant denies each and every allegation in paragraph 81.

368  
369 82. Defendant denies each and every allegation in paragraph 82.

370  
371 83. Defendant denies each and every allegation in paragraph 83.

372  
373 84. Defendant denies each and every allegation in paragraph 84.

374  
375 **THIRD CAUSE OF ACTION**  
376

377 85. Defendant repeats all answers of the foregoing paragraphs as if fully set  
378 herein.

379  
380 86. Defendant denies each and every allegation in paragraph 86.

381  
382 87. Defendant denies each and every allegation in paragraph 87.

383  
384 88. Defendant denies each and every allegation in paragraph 88.

385  
386 89. Defendant denies each and every allegation in paragraph 89.

387  
388 90. Defendant denies each and every allegation in paragraph 90.

389  
390 91. Defendant denies each and every allegation in paragraph 91.

391  
392 92. Defendant denies each and every allegation in paragraph 92.

393  
394 93. Defendant denies each and every allegation in paragraph 93.

395  
396 **FOURTH CAUSE OF ACTION**

397  
398 94. Defendant repeats all answers of the foregoing paragraphs as if fully set  
399 herein.

400  
401 95. Defendant is without knowledge or information sufficient to form a  
402 belief as to the truth or the falsity of the allegations contained in paragraph 95.

403  
404 96. Defendant agrees that the Individuals agreed to appear in the film.  
405 Defendant denies each and every other allegation in paragraph 96.

406  
407 97. Defendant denies each and every allegation in paragraph 97.

408  
409 98. Defendant denies each and every allegation in paragraph 98.

410  
411 99. Defendant denies each and every allegation in paragraph 99.

412  
413 100. Defendant denies each and every allegation in paragraph 100.

414  
415 **FIFTH CAUSE OF ACTION**

416  
417 101. Defendant repeats all answers of the foregoing paragraphs as if fully  
418 set herein.

419  
420 102. Defendant denies each and every allegation in paragraph 102.

421  
422 103. Defendant denies each and every allegation in paragraph 103

423  
424 104. Defendant is without knowledge or information sufficient to form a  
425 belief as to the truth or the falsity of the allegations contained in paragraph 104.

426  
427 105. Defendant denies each and every allegation in paragraph 105

428  
429 106. Defendant denies each and every allegation in paragraph 106.

430  
431 107. Defendant denies each and every allegation in paragraph 107.

432  
433 **SIXTH CAUSE OF ACTION**

434  
435 108. Defendant repeats all answers of the foregoing paragraphs as if fully set  
436 herein.

437  
438 109. Defendant denies each and every allegation in paragraph 109.  
439

440 110. Defendant denies each and every allegation in paragraph 110.  
441

442 111. Defendant denies that My Van did not give permission to use the  
443 historical footage provided to the Defendants. Defendant is without knowledge or  
444 information sufficient to form a belief as to the truth of each and every allegation  
445 contained in paragraph 111 therefore denies each and every one of them.  
446

447 112. Defendant denies each and every allegation in paragraph 112.  
448

449 113. Defendant admits that the defendants' own the copyright of the film.  
450 Defendant denies each and every allegation in paragraph 113.  
451

452 114. Defendant denies each and every allegation in paragraph 114.  
453

454 115. Defendant denies each and every allegation in paragraph 115.  
455

456 116. Defendant denies each and every allegation in paragraph 116.  
457

#### 458 **SEVENTH CAUSE OF ACTION**

459

460 117. Defendant repeats all answers of the foregoing paragraphs as if fully  
461 set herein.  
462

463 118. Defendant denies each and every allegation in paragraph 118.  
464

465 119. Defendant denies each and every allegation in paragraph 119.  
466

467 120. Defendant denies each and every allegation in paragraph 120.  
468

#### 469 **PRAYER FOR RELIEF**

470

471 A. Defendant denies each and every request in paragraph A.  
472

473 B. Defendant denies each and every request in paragraph B.  
474

475 C. Defendant denies each and every request in paragraph C.  
476

477 D. Defendant denies each and every request in paragraph D.

478  
479 E. Defendant denies each and every request in paragraph E.

480  
481 F. Defendant denies each and every request in paragraph F.

482  
483 G. Defendant denies each and every request in paragraph G.

484  
485 H. Defendant denies each and every request in paragraph H.

486  
487 I. Defendant denies each and every request in paragraph I.

488  
489 **AFFIRMATIVE DEFENSE**

490  
491 Defendants do not knowingly or intentionally waive any applicable defense and re-  
492 serve the right to assert and rely on such other applicable defenses as may become  
493 available or apparent during the course of the proceedings. Defendant further re-  
494 serves the right to amend his Answer and/or defenses accordingly, and/or delete  
495 defenses that they determine are not applicable, during the course of the proceed-  
496 ings. Without assuming any burdens that they would not otherwise bear, Defendant  
497 asserts the following defenses:

498  
499 **FIRST AFFIRMATIVE DEFENSE**

500  
501 **LACK OF STANDING**

502  
503 1. All Eleven Plaintiffs fail to pass the Supreme Court's three-part test to  
504 determine whether a party has standing to sue.

505  
506 2.Plaintiffs TRONG PHAN, SON NGUYEN and THANH-MAI NGUYEN  
507 (name later changed to Thanh Phuong Le) are suing for Misappropriation of  
508 Likeness (Cause of Action 4)

509  
510 3.These 3 plaintiffs do not appear in the film that is the issue of this lawsuit  
511 (film), nor were they interviewed for the film. In their Declarations which are in  
512 the Complaint, these plaintiffs did not state that they appeared in the film or were  
513 interviewed.

514  
515 4.Plaintiff by the name of DIEP PHAN, is suing for Misappropriation of  
516 Likeness (Cause of Action 4). This Plaintiff's name is unknown to the Defendant.

Defendant needs further clarification on this person's name and a visual image of this person. There is no declaration from Diep Phan.

5.Plaintiff NEXT VIETNAM PROJECTS FOUNDATION INC (NVF), (Cause of Actions 2,5,6) states in the complaint that it does not have a contract with Defendants and that this corporation was not in existence during production of the film. NVF also did not provide a single piece of evidence in their 110 pages of exhibits and declarations that would suggest NVF had a business relationship with Defendants.

6.Plaintiff SAIGON BROADCASTING TELEVISION NETWORK INC (SBTN), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in SBTN copyright ownership of the film. SBTN allegation is in direct violation of Copyright Law of the United States (Title 17). SBTN also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest SBTN had a business relationship with Defendants.

7.Defendant also asserts that it is not reasonable to believe that with the many complexities of making a feature film, that any reasonable party would ever go into a binding contract strictly through conduct and mutual representations.

8.Plaintiff RADIX CORPORATION (VVFH), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in VVFH copyright ownership of the film. VVFH allegation is in direct violation of Copyright Law of the United States (Title 17). VVFH also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest VVFH had a business relationship with Defendants.

9.Plaintiffs NAM PHAM and MINH NGUYEN are suing for Misappropriation of Likeness (Cause of Action 4). Both of these plaintiffs signed written Talent Release Form contracts with Defendants that allowed Defendants full rights to use their Likeness in the film and for marketing of film. As per the Talent Release forms, both of these plaintiffs waived their rights to sue Defendants.

10.Plaintiff MY VAN INTERNATIONAL INC (My Van) is suing for Copyright Infringement (Cause of Action 1). The issue is Defendants' use of 12 seconds of a historical 1970 video that My Van alleges to own. My Van provided this 12 second clip to Defendants and confirmed the permission for use in a series

557 of written emails to Defendant. Defendant asserts that this clip is considered stock  
558 footage in the film industry and has little to no monetary value.

559  
560 11.Plaintiff CARINA OANH HOANG is suing for Misappropriation of  
561 Likeness (Cause of Action 4). Plaintiff states in her declaration that she agreed to  
562 be interviewed and appear in the film but later changed her mind.

563  
564 **SECOND AFFIRMATIVE DEFENSE**

565  
566  
567 **BREACH OF CONTRACT BY PLAINTIFFS**

568  
569 12.MY VAN in the First Cause of Action alleges Copyright Infringement.  
570 My Van states in his pleading that it allowed Defendant to use the video footage.

571  
572 13.Defendant asserts that My Van and Defendant established a contract  
573 through written email exchanges whereby My Van stated only one condition of  
574 use. This one condition was that the footage could only be used in one film and  
575 that for consideration he wanted a listing in the credits of the film.

576  
577 14.NAM PHAM and MINH NGUYEN in the Second Cause of Action both  
578 state they agreed to be in the film. Defendant asserts that Nam Pham and Minh  
579 Nguyen both signed written Talent Release Form contracts and breached those  
580 contracts with Defendants. These Talent Release Form contracts signed by these  
581 plaintiffs allowed Defendants full rights to use their Likeness in the film and for  
582 marketing of film. As per the Talent Release forms, both of these plaintiffs waived  
583 their rights to sue Defendants.

584  
585  
586 **THIRD AFFIRMATIVE DEFENSE**

587  
588 **Judicial Estoppel**

589  
590 15.Judicial Estoppel bars plaintiff NAM PHAM, President of plaintiff NVF,  
591 from taking positions in a case that is inconsistent with his position in a prior judi-  
592 cial proceeding.

593  
594 16.Nam Pham states in his declaration (Exhibit A), that he previously stated  
595 under oath in another court case, that his corporation NVF hired Defendant. Now,  
596 Nam Pham states that his previous statement under oath was wrong. In this current



lawsuit, Nam Pham now states that plaintiffs VVFH and SBTN have an unwritten contract with Defendant.:

Exhibit A, pg.2, line 25. Page 3. Line 26 – Nam Pham Declaration

“Mr. Koster sued Ms. Minh Nguyen personally for defamation based on her efforts to stop his, and the other Defendants’, wrongdoing. In that lawsuit I submitted a declaration stating, among other things, that the Vietnam Foundation had hired Mr. Koster to work on the Film. Of course, the Vietnam Foundation was not technically formed until December 2019. It would therefore be more precise to say that the producers of the Film – VVFH and SBTN – hired Mr. Koster and raised funds for the benefit of the Vietnam Foundation which, by agreement between the producers, on the one hand, and Mr. Koster, on the other hand, would be the owner of the Film and all related material, and all rights thereto.”

17.Minh Nguyen states in her declaration (Exhibit A), that she previously stated under oath in another court case, that Next Vietnam Projects Foundation Inc (NVF) funded the film but now states that her previous statement under oath was false because NVF didn’t exist at the time. In this current lawsuit she now states that other entities funded the film.

Exhibit E, pg. 2., lines 24-28 – Minh Nguyen’s Declaration:

“I was sued personally for defamation by Mr. Koster in Arizona due to my efforts to stop Mr. Koster’s, and the other Defendants’, misconduct. In that matter, I submitted a declaration wherein I stated, among other things, that the Film was funded by the Vietnam Foundation, which was my understanding at the time. I now understand that the Vietnam Foundation was not technically formed until late 2019, although the Film, and the rights thereto, belong to the Foundation.”

18.Nam Pham’s and Minh Nguyen’s false testimony under oath in that previous lawsuit, convinced the Judge in his ruling that Jurisdiction was not in Arizona. This previous lawsuit included a number of counts against Minh Nguyen including Interference of Business Expectations. The Defendant filed this lawsuit in the attempt to stop Minh Nguyen’s relentless and ruthless personal attacks on Defendant, his family and friends. Richard Botkin, as stated in the complaint, sent the Defendant an email on behalf of Minh Nguyen. In this email, Richard Botkin stated, if Defendant does not do what he is told to do, he will be both personally and professionally destroyed.

**FOURTH AFFIRMATIVE DEFENSE**

17.22 COPYRIGHT—AFFIRMATIVE DEFENSE—FAIR USE (17 U.S.C. § 107)

19.MY VAN in First Cause of Action alleges Copyright Infringement. Even if My Van has changed his mind about allowing usage of footage, Defendant has used only 12 seconds of a 1 hour 40-minute film. The use is editorial, contains generic streets scenes and is it not a critical part of the film. Also, this is a historical film from 1970 that My Van did not create but has registered a copyright in 2016. Defendant's opinion is that there is high likely hood that this film is in the Public Domain.

**FIFTH AFFIRMATIVE DEFENSE**

COPYRIGHT LAW OF THE UNITED STATES (TITLE 17)

20.Plaintiff Nam Pham, President of NEXT VIETNAM PROJECTS FOUNDATION INC (NVF), (Cause of Actions 2,5,6) states in the complaint that NVF does not have a contract with Defendants and that NVF was not in existence during production of the film. NVF alleges ownership of the copyright of the film which is in direct violation of Copyright Law of the United States (Title 17). NVF also did not provide a single piece of evidence in their 110 pages of exhibits and declarations that would suggest NVF had a business relationship with Defendants.

21.Plaintiff SAIGON BROADCASTING TELEVISION NETWORK INC (SBTN), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in SBTN copyright ownership of the film. SBTN allegation is in direct violation of Copyright Law of the United States (Title 17). SBTN also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest SBTN had a business relationship with Defendants.

22.Plaintiff RADIX CORPORATION (VVFH), (Cause of Actions 2,3,6,7) states "Defendants were parties to a contract established by their conduct and mutual representations" which resulted in VVFH copyright ownership of the film. VVFH allegation is in direct violation of Copyright Law of the United States (Title 17). VVFH also did not provide a single piece of evidence in plaintiffs' 110 pages of exhibits and declarations that would suggest VVFH had a business relationship with Defendants.

23.NVF alleges to be a third party beneficiary of the alleged unwritten contract between VVFH/SBTN and Defendant. Since NVF was not in existence in 2018, NVF can not be an Intended Beneficiary. NVF would instead be an Incidental Beneficiary that has no contractual rights and can not sue in reference to this alleged contract.

## **SIXTH AFFIRMATIVE DEFENSE**

### **UNJUST ENRICHMENT**

24.MY VAN in FIRST CAUSE OF ACTION alleges Copyright Infringement. Defendant asserts that My Van is seeking to recover more than it is entitled to recover in this case, and the award of the judgement sought by My Van would unjustly enrich My Van. Defendant asserts that there is very little to no monetary value to the historical 1970 video footage provided by My Van to Defendant.

25.Defendant asserts that all the PLAINTIFFS are seeking to recover more than they are entitled to recover in this case, and the award of the judgement sought all Plaintiffs would unjustly enrich the Plaintiffs.

## **SEVENTH AFFIRMATIVE DEFENSE**

### **PAROL EVIDENCE RULE**

26.MY VAN in FIRST CAUSE OF ACTION alleges Copyright Infringement. Defendant asserts that the written email that My Van sent to the Defendant was intended to be the full agreement between the parties, and that My Van cannot present any evidence not in writing to establish any terms of the agreement not in the written agreement.

27.NAM PHAM and MINH NGUYEN in the FOURTH CAUSE OF ACTION (Misappropriation of Likeness) stated that Defendant made representations outside of their written Talent Release Form contracts. Defendant asserts that the written agreement with Nam Pham and Minh Nguyen was intended to be the full agreement between the parties, and that Nam Pham and Minh Nguyen cannot present any evidence not in writing to establish any terms of the agreement not in the written agreement.

717  
718  
719 **EIGHTH AFFIRMATIVE DEFENSE**

720  
721 **NO DAMAGE TO PLAINTIFFS**

722  
723 28.Defendant asserts that even if Plaintiffs allegations are true, Plaintiffs did  
724 not suffer any damages or economic loss.

725  
726 **NINTH AFFIRMATIVE DEFENSE**

727  
728 **UNCLEAN HANDS**

729  
730 29.Defendant asserts that Plaintiffs have committed wrongdoings, and this  
731 lawsuit is attempting to benefit from this wrongdoing.

732  
733 **TENTH AFFIRMATIVE DEFENSE**

734  
735 **LACHES**

736  
737 30.Defendant asserts that Plaintiffs has waited an unreasonably long time to  
738 file this lawsuit (1 year 7 months since alleged breach), and the Defendant's ability  
739 to defend this lawsuit has been severely prejudiced due to this unreasonable delay  
740 by denying Defendant's access to documents, physical evidence, witnesses and a  
741 reasonably fresh recollection of the events giving rise to this lawsuit.

742  
743  
744 **ELEVENTH AFFIRMATIVE DEFENSE**

745  
746 **FAILURE TO MITIGATE DAMAGES**

747  
748 31.Defendant asserts that Plaintiffs have failed to take reasonable steps to  
749 reduce or minimize the damages that allegedly occurred. Plaintiffs did not contact  
750 the Defendant about the Defendant's alleged breaches (with the exception of Minh  
751 Nguyen and Next Vietnam Foundation Inc.) until the Defendant learned of it from  
752 the lawsuit. Also, all the Plaintiffs waited 1 year 7 months from the alleged breach  
753 to file his lawsuit.

754  
755 **TWELVETH AFFIRMATIVE DEFENSE**

LACK OF PRIVITY

32.Radix Corporation Inc (VVFH), Saigon Broadcasting Television Network Inc (SBTN) and Next Vietnam Foundation Inc (NVF) state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

33.Defendant asserts that there is no contractual relationship or agreement between VVFH, SBTN and NVF and the Defendants. The Defendant never entered into a contract or agreement that relates to the Second Cause of Action. The question arises as to why VVFH, SBTN and NVF did not provide a single item of evidence of this unwritten contractual agreement in plaintiffs’ 110 pages of exhibits and declarations.

**THIRTEENTH AFFIRMATIVE DEFENSE**

STATUE OF FRAUDS

34.VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

35.The Defendant asserts that VVFH, SBTN and NVF are suing under a theory of unwritten contract, but such an unwritten contract would be unenforceable because it is required to be in writing pursuant to California Civil Code 1624(a)(1-7).

36.Defendant asserts that it is not reasonable to believe that with the many complexities of making a feature film, that any reasonable party would ever go into a binding contract strictly through conduct and mutual representations.

**FOURTEENTH AFFIRMATIVE DEFENSE**

LACK OF ACCEPTANCE

37.VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual

representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19)

38. Defendant asserts that no contract was formed because Defendant never explicitly or through his actions accepted the contract or certain terms of the contract.

## **FIFTEEN AFFIRMATIVE DEFENSE**

### **RUNNING OF THE STATUTE OF LIMITATIONS**

39. VVFH, SBTN and NVF state in the SECOND CAUSE OF ACTION “Defendants were parties to a contract established by their conduct and mutual representations. The Vietnam Foundation is a third-party beneficiary of that contract.” (pg. 19, para 79, line 19).

40. Defendant asserts that there is no contract but even if there was one, recovery in this case is barred by the statute of limitations as VVFH, SBTH and NVF have waited more than 2 years from the date of the alleged breach by the Defendant before filing this lawsuit, and recovery is therefore barred under Code of Civil Procedure 339. The alleged breach of contract by Defendant conveyed in the complaint is November 22, 2019.

## **SIXTEEN AFFIRMATIVE DEFENSE**

### **LACHES**

41. Defendant asserts that Plaintiffs, by citing allegations from over 5 to 10 years ago, have waited an unreasonably long time to file this lawsuit, and the Defendant’s ability to defend this lawsuit has been severely prejudiced due to this unreasonable delay by denying the Defendant access documents, physical evidence, witnesses and a reasonably fresh recollection of the events giving rise to this lawsuit.

## **SEVENTEENTH AFFIRMATIVE DEFENSE**

### **NO BREACH OF CONTRACT BY PLAINTIFF**

836  
 837 42. In Defendant's contracts and agreements with plaintiffs My Van, Nam  
 838 Pham, Minh Nguyen and Carina Oanh Hoang, the Defendant asserts that Defend-  
 839 ant performed all duties owed under the contracts and agreements, and therefore  
 840 never breached the agreements.

841  
 842  
 843 **EIGHTEENTH AFFIRMATIVE DEFENSE**

844  
 845 **FAILURE TO STATE A CAUSE OF ACTION**

846  
 847 43. The defendant asserts that the plaintiffs have failed to state essential ele-  
 848 ments for their causes of action.

849  
 850 **NINETEENTH AFFIRMATIVE DEFENSE**

851  
 852 **ESTOPPEL**

853  
 854 44. The Defendant relied upon the original representations of the Plaintiffs to  
 855 his detriment and asks the court to decide this case as if the original Plaintiffs' rep-  
 856 resentations are true.

857  
 858 **TWENTIETH AFFIRMATIVE DEFENSE**

859  
 860 **FRAUD**

861  
 862 45. Plaintiff Minh Nguyen states in her pleading that on behalf of plaintiff  
 863 NVF, she sent copyright take notices to distribution platforms Vimeo, Ebay and  
 864 IMDB to stop Defendants' US Registered Copyrighted film from being released.  
 865 Minh Nguyen misrepresentation to these companies that Defendants are not the  
 866 copyright owners. Minh Nguyen had signed a Talent Release Form Contract with  
 867 Koster prohibiting her from taking any legal activities against Koster and his affili-  
 868 ates in reference to the film. This is copyright infringement and greatly harmed De-  
 869 fendants.

870  
 871  
 872 **ADDITIONAL DEFENSES**

873  
 874 Defendants reserve the right to assert additional defenses based on infor-  
 875 mation learned or obtained during discovery.



WHEREFORE, in the Defendant's belief, this complaint was a manufactured lawsuit specifically designed to be too costly and time consuming for Defendants to legally answer to, so Defendant respectfully request to the Court that it:

A. Dismiss the Complaint in its entirety with prejudice.

B. Deny each and every demand and prayer for relief contained in the Complaint.

C. Award Defendants their costs and reasonable attorneys' fees; and

D. Award Defendants such other and further relief as the Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated June 9, 2023

*Frederick Koster*

Frederick Koster Defendant in Pro

### **COUNTER CLAIM**

Defendant Frederick Koster asserts this counterclaim against Plaintiffs; The Next Vietnam Projects Foundation, Inc (NVF), Radix Corporation (VVFH), Saigon Broadcasting Network, Inc. (SGTN), My Van International, Inc. (My Van), Nam Pham (Pham), Carina Oanh Hoang, Diep Phan, Trong Phan, Son Nguyen, Thanh-Mai Nguyen and Minh Nguyen.

### **THE PARTIES**

1. Frederick Koster (Koster), a resident of Arizona
2. Next Vietnam Projects Foundation, Inc (NVF) claims to be a Massachusetts corporation.
3. Radix Corporation (VVFH) claims to be a Texas corporation.

4. Saigon Broadcasting Network, Inc. (SGTN) claims to be a California corporation.
5. My Van International, Inc. (My Van) claims to be a California corporation.
6. Nam Pham (Pham) claims to be a Massachusetts resident.
7. Carina Oanh Hoang claims to be an Australian citizen.
8. Diep Phan claims to be a California resident.
9. Trong Phan claims to be a Texas resident.
10. Son Nguyen claims to be a California resident.
11. Thanh-Mai Nguyen claims to be a California resident.
12. Minh Nguyen (Nguyen) claims to be a California resident and practicing attorney.

### **JURISDICTION AND VENUE**

13. United States District Court for the Central District of California

### **BACKGROUND**

14. In December 2017, Defendant/Plaintiff, Frederick Koster (Koster) was contacted by Plaintiff/Defendant Nam Pham (Pham). Pham told Koster that Pham knew of Koster from a previous film that Koster had directed, produced, and wrote the screenplay for, called Ride the Thunder – A Vietnam War Story of Victory & Betrayal.
15. Pham told Koster that Koster had become very well known in the Vietnamese Community due to the popularity of Ride the Thunder.
16. Ride the Thunder was a theatrical film released in 2015 that was number one at the box office in its opening week (per theater basis, Rentrak). The film had a successful independent limited theatrical run and made the Academy Awards Qualifying List. The film also has been watched by approximately 2.5 million people on Amazon Prime.
17. In January of 2018, Pham asked Koster if he was interested in creating a new film project on the Vietnam War. Koster agreed that he was interested.
18. Pham stated he needed to raise money for the making of this new

956 film. Pham asked Koster if he could help promote this new film project by  
957 way of being interviewed on numerous TV and radio shows and making per-  
958 sonal appearances at events among other ways to help. Koster, believing  
959 that this was an altruistic community non-profit venture by Pham, agreed to  
960 help.

961  
962 19. Pham asked Koster if Pham could be an actor in the film. Koster agreed.  
963 Nam later asked if future plaintiff, Minh Nguyen (Nguyen), could also be an  
964 actor in the film. Koster agreed.

965  
966 20. Both Pham and Nguyen signed industry standard written Talent Release  
967 form contracts allowing Koster to use their likeness and names in the film  
968 and marketing thereof. In these Talent Release forms both, Pham and Ngu-  
969 yen expressively waived their rights to sue Koster or any of his affiliates.

970  
971 21. As time went along during 2018 and 2019, Koster saw money being raised  
972 through many different parties using Koster's name to promote and raise  
973 money for this new film.

974  
975 22. This fund raising was not by a single non-profit organization but by many  
976 different organizations in numerous states and on the Internet. Some were  
977 non-profit and others were for-profit businesses. Koster saw no single legal  
978 entity operating this fund raising. Nor did he see the legal protocols of a  
979 non-profit being administered to this fund raising.

980  
981 23. During this time, Pham on many occasions introduced Koster to many dif-  
982 ferent individuals to talk about the creation of this new film project.

983  
984 24. In 2019, an ongoing dispute started between Koster and Pham in reference to  
985 how much money was being raised and how much money was being allo-  
986 cated for the making of the film.

987  
988 25. Steve Sherman of plaintiff, Radix Inc, on behalf of Pham, sent Koster a writ-  
989 ten email stating that if Koster asks for any more money or asks any more  
990 questions about it, that Sherman will use his influence and business connec-  
991 tions to make sure that Koster never works again. Sherman also stated that  
992 he will use the money that was raised for the film to sue Koster.

993  
994 26. By September 2019, due to lack of funding Koster had already stopped film

995 production twice. Koster contacted the person that Pham stated was his as-  
996 sistant and Koster requested more funding to continue film production.  
997 Koster was told by the assistant that there was very little money left.  
998

999 27. Koster stated in a group email to interested people that he will not continue  
1000 production of the film until Koster knows how much money was raised and  
1001 proof there was still money left for film production. Exhibit plaintiff  
1002

1003 28. Pham then emailed a simple one-page document of monies raised and also  
1004 provided two separate bank statements. Each bank statement contained equal  
1005 amounts of about \$45,000 each. The bank statements were from an organi-  
1006 zation called You Help Foundation Inc which is not a plaintiff in this case.  
1007 Pham was president of this foundation. Labeled at the top of one bank state-  
1008 ment was plaintiff's Radix name, "VVFH" and the other bank statement was  
1009 labeled "TOE" (an unknown entity to Koster). This TOE entity appeared in  
1010 Plaintiffs' exhibit --- whereby plaintiff SBTN informs their television audi-  
1011 ence in order to donate to this new film project, write their checks out to  
1012 TOE and mail it to them.  
1013

1014 29. On November 22 2019, Nam sent a group email to interested parties stating  
1015 to people that he wanted to sue Koster for not finishing the film.  
1016

1017 30. All totaled, from May 22, 2019 to November 25, 2019, Koster received 9  
1018 sums of money from multiple sources that used numerous delivery methods  
1019 to Koster, totaling \$265,000.  
1020

1021 31. Koster never received any IRS reporting 1099 forms for this money re-  
1022 ceived. When Koster asked about this, Koster was told that no IRS docu-  
1023 ments needed to be filed.  
1024

1025 32. Also due to the many people and organizations that were involved in this  
1026 fund raising, Koster did not know who the single legal entity was, that was  
1027 operating this fund raising. Koster was never offered a contract nor were  
1028 there any discussions about a contract or agreement about making the film.  
1029

1030 33. Although confronted with many difficulties in getting funding to make this  
1031 film, Koster realized that his name was advertised to the public in reference  
1032 to the making of this new film. Due to this and the importance of this film,  
1033 Koster felt compelled to finish making this film anyway and put his own  
1034 money into it.

1035  
1036 34. In making this film Koster performed the following:  
1037

1038 35. During an approximately two-year period, Koster and subcontractor(s) of  
1039 Koster, went on about 26 separate travel trips in the making and promotion  
1040 of the film.  
1041

1042 36. Koster and subcontractor(s) of Koster, traveled to and performed film pro-  
1043 duction in Paris France, New York City, Washington DC, Los Angeles CA,  
1044 Phoenix AZ, Houston TX and Dallas TX among other cities.  
1045

1046 37. Koster conducted approximately 90 videotaped interviews which were pro-  
1047 fessionally shot in theatrical 4K format.  
1048

1049 38. Koster paid all related expenses and personally produced all film production  
1050 both domestically and internationally. Filming days included multiple days  
1051 of cast and crew numbering about 80 people per day on set and using multi-  
1052 ple cameras to shoot. (See pics)  
1053

1054 39. Koster directed, produced and wrote the screenplay for the film.  
1055

1056 40. Koster paid for all related expenses of film pre-production, production and  
1057 post-production including salaries of actors, editors, sub-contractors, cater-  
1058 ing, travel expenses, lodging, locations fees, rentals of camera, lighting, etc.,  
1059 crew, travel expenses (including trip to Paris France) along with other typi-  
1060 cal production and postproduction costs like licensing music, b-roll footage,  
1061 etc..  
1062

1063 41. The \$265,000 that was received by Koster during 2018 and 2019 was put to-  
1064 wards the production of the film. The rest of the cost of making the film was  
1065 paid by Koster.  
1066

1067 42. In 2021, Koster completed the film and sent private screeners to prominent  
1068 historians and military figures. The film was highly praised as one of the  
1069 best documentaries on the Vietnam War.  
1070

1071 43. In 2021, Koster started receiving calls and text messages from the Vietnam-  
1072 ese community stating that there was a lot more money collected during  
1073 fund raising that was being reported. Included in these text messages were  
1074 claims of evidence that much more money was collected. In conversations

1075 with other members of the Vietnamese community, Koster was told that  
1076 Pham has been asking many people to write negative letters about Koster.  
1077 Koster was told everyone that they knew refused to write these letters.  
1078

1079 44. At the beginning of 2021, through emails and discussions, Koster was made  
1080 aware that Pham although not the copyright holder of the film, had been try-  
1081 ing to sell the film to Netflix and Hulu.  
1082

1083 45. On or about April 21, 2021, Koster released his copyrighted film and mar-  
1084 keted this film through Vimeo, Ebay and Imdb.  
1085

1086 46. On April 22, 2021, plaintiff Nguyen without first directly contacting Koster,  
1087 emails Koster and cc copies to numerous prominent people claiming that  
1088 Koster has no right to use her likeness in the film. Nguyen further states  
1089 among many other false and defamatory statements about Koster, that  
1090 Koster was committing willful copyright infringement, malicious fraudulent  
1091 misconduct and disseminating false copyright claims. Nguyen also states  
1092 that an organization (which is fictitious) is the one who owns the film. See  
1093 Exhibit ---  
1094

1095 47. Koster, due to never before receiving a Cease and Desist Letter from an at-  
1096 torney, temporarily stops the distribution of the film to the public until he  
1097 talks with his attorney.  
1098

1099 48. Koster's attorney, advised him that what Nguyen sent to him was not a court  
1100 ordered document and that Nguyen has no legal right to take down Koster's  
1101 copyrighted film.  
1102

1103 49. Koster then released the film again.  
1104

1105 50. On April 26 2021, Nguyen, under her title as an attorney for her law firm,  
1106 Kasowitz Benson Torres LLP, emailed one of Koster's subcontractors, Brian  
1107 Tooker (Tooker) that stated Koster will soon be criminally charged and will  
1108 be under criminal proceedings. She is also suing Koster on behalf of an en-  
1109 tity that she represents (this entity that she cites is fictitious). Nguyen fur-  
1110 ther states a number of false and inflammatory statements about Koster and  
1111 then states that unless Tooker sends property owned by Koster to her law  
1112 firm, Tooker will also be faced with criminal charges and will be sued by  
1113 her. Exhibit --  
1114

1115 51. On April 27, 2023, Nguyen sent DMCA copyright take down notices to  
1116 Vimeo, Ebay and IMDb. In the documents that Koster received from these  
1117 companies, Nguyen claimed that she was the copyright holder. In Nguyen  
1118 declaration, she states that she did this take down at the request of plaintiff  
1119 Pham and plaintiff Next Vietnam Foundation.  
1120

1121 52. On May 7 2021, Nguyen, under her title as an attorney for her law firm,  
1122 Kasowitz Benson Torres LLP, sent another email directed at Koster and  
1123 Tooker with cc copies to numerous prominent people. This email reiterated  
1124 that Koster was committing willful copyright infringement, malicious fraud-  
1125 ulent misconduct and disseminating false copyright claims. Nguyen states  
1126 multiple false and inflammatory statements defaming Koster, including that  
1127 Koster does not have a written Talent Release contract with her. Nguyen  
1128 continues to state that she is in discussions with the District Attorney Office  
1129 in commencing a formal criminal complaint that will commence immedi-  
1130 ately against Koster and his subcontractor.  
1131

1132 53. On May 19, 2021, Richard Botkin on behalf of Nguyen, sends an email to  
1133 Koster stating the following “I am not sure you grasp fully the seriousness of  
1134 these issues nor what failure to comply will mean for you personally, profes-  
1135 sionally and financially. ... spare yourself tragic consequences if you fail to  
1136 accede to their demands.”  
1137

1138 54. In reference to Botkin’s email to Koster. Koster telephones Botkin and  
1139 leaves a message to call him. Instead of a call back from Botkin, Koster gets  
1140 an email from Nguyen that Botkin is being represented by her law firm.  
1141

1142 55. On May 11. 2023, Pham send emails to Koster and cc copies to numerous  
1143 prominent people making false claims and defaming Koster. Pham demands  
1144 Koster to send his interviews to Nguyen’s law firm, Kasowitz Benson Torres  
1145 LLP,  
1146

1147 56. In May of 2021, based on Nguyen ‘s threatening letters to sue Koster, Koster  
1148 on the advice from Koster’s attorney, was told it was urgent to file a lawsuit  
1149 now before Nguyen files one against Koster in California. Koster files a  
1150 lawsuit against Nguyen in Arizona State Civil Court for several causes in-  
1151 cluding breach of contract and interference of business.  
1152

1153 57. As stated in the plaintiffs’ current lawsuit in CA Federal Court against  
1154 Koster, both Nguyen and Pham admit in their declarations that they provided



1155 false testimony under oath to the Arizona Judge. Their now admitted false  
1156 testimony directly affected the Judge's decision that Jurisdiction was not in  
1157 Arizona. Koster did not further pursue this lawsuit.

1158  
1159 58. On February 5, 2022, Pham privately emailed Tooker (Koster's subcontrac-  
1160 tor for film) stating that Pham wants to avoid a lawsuit against Tooker and  
1161 will pay Tooker to send Pham the Interviews which are the property of  
1162 Koster. Tooker does not send the Interviews.

1163  
1164 59. In March of 2022, Koster contacted a large and well-respected US govern-  
1165 ment sanctioned non-profit called Victims of Communism (VOC) to donate  
1166 the Koster interviews to VOC.

1167  
1168 60. In email correspondence with the VOC, the VOC was extremely impressed  
1169 by the interviews and was excited to receive this donation. The VOC told  
1170 Koster that they were going to put the interviews on their website and then  
1171 create contests for Vietnamese Film makers to see who could make the best  
1172 films using these interviews. VOC also talked about premiering the film at  
1173 their facility which would have gotten a lot of national attention for the Viet-  
1174 namese community.

1175  
1176 61. The VOC suddenly stopped communicating with Koster. Koster didn't un-  
1177 derstand what happened until plaintiff Pham presented in Exhibit K in his  
1178 complaint that Pham stopped this donation.

1179  
1180 62. On March 8, 2022, Pham and Nguyen sent through email to Koster, a writ-  
1181 ten contract to buy the film and the interviews from Koster for \$30,000.  
1182 Among the many one-sided conditions in the contract was that there would  
1183 be a transfer of copyright ownership of both the film and interviews to Next  
1184 Vietnam Foundation, they would have total control of the film including  
1185 keeping revenue sources and also re-editing of the film including changing  
1186 the credits of the film and that Koster's credit would be downgraded from  
1187 Director to co-director.

1188  
1189 63. Koster's attorney reviewed the contract and replied in an email to Koster  
1190 that the contract was completely one sided in favor of NVF and was danger-  
1191 ous because it allowed NVF to sue in the future while Koster had no rights  
1192 in the contract.

1193  
1194 64. On November 23, 2022, plaintiffs Pham, Nguyen and 9 others filed a lawsuit

against defendant Koster and one of Koster's subcontractors, Brian Tooker and his LLC.

65. In 2023, Pham, Nguyen and other Plaintiffs made a settlement with code-fendant Tooker. The settlement agreement included Tooker (who at the time had possession of Koster Interviews, film, etc.) giving plaintiffs this Koster copyrighted property to the plaintiffs and then Plaintiffs forbade Tooker from releasing Koster's own property back to Koster.

66. On April 13, 2023, Pham is interviewed live on radio station 900AM Houston in reference to the film. Pham, in a recorded interview, tells the radio audience about the lawsuit and states that he will win in court by default. Pham makes false statements and continues to defame Koster on the radio.

67. On April 14, Koster is interviewed live on radio station 900AM Houston to counter Pham's previous day's statements.

## **COUNTERCLAIMS**

### **Count 1**

#### **(KOSTER AGAINST MINH NGUYEN, NAM PHAM, MY VAN INTERNATIONAL INC) (BREACH OF CONTRACT)**

1. Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.

2. Koster owns the copyrighted film and has written signed Talent Release Form Contracts with Minh Nguyen (Nguyen) and Nam Pham (Pham) whereby Nguyen and Pham expressly agreed to allow Koster full use of their likeness and performance in the film and to utilize their appearance in connection to the film. This Talent Release Form also states that Nguyen and Nam expressly release Koster, his employees and licensees from and against any and all claims to the invasion of privacy, defamation or any cause of action arising out of production, distribution, broadcast or exhibition of the video.

3. Nguyen and Pham have repeatedly breached this Talent Release Form through filing a malicious lawsuit against Koster and a Koster licensee, defamation, interference of Koster business, illegal DMCA copyright take downs of the film's distribution among other actions.

1235  
1236 4.Koster has suffered tremendously because of this defamation including  
1237 financially, his reputation and health related issues.  
1238

1239 5.My Van and Koster established a contract through written email exchanges  
1240 whereby My Van stated only one condition of use of using his historical video  
1241 footage. This one condition was that the footage could only be used in one film  
1242 and that for consideration he wanted a listing in the credits of the film. My Van  
1243 breached this agreement by changing his mind about this video usage of 12  
1244 seconds without informing Koster and filing a malicious lawsuit against Koster and  
1245 a Koster licensee.  
1246

1247 6.The actions of Nguyen, Pham and My Van have severely and irreparably  
1248 damaged Koster's reputation, income and financial stability, from which Koster,  
1249 aged 67 years old will never recover from. Their actions have also caused severe  
1250 and prolonged emotional distress and health issues for Koster who is a senior  
1251 citizen.  
1252

1253 **COUNT 2**  
1254 **(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX**  
1255 **CORPORATION)**  
1256 **(DEFAMATION)**  
1257

1258 7.Koster repeats and reallege all of the foregoing paragraphs as if fully set  
1259 forth herein.  
1260

1261 8.Nguyen, Pham and Steve Sherman of the Radix Corporation (VVFH) have  
1262 willfully and repeatedly (both publicly and privately) severely defamed Koster  
1263 through public written emails, word of mouth, through the media and the filing of a  
1264 malicious lawsuit which is now publicly known through Pham's radio interview  
1265 that he did and also through the many group emails of Nguyen to prominent people  
1266 that states that Koster is under criminal proceedings.  
1267

1268 9.Nguyen also states that she sent DMCA copyright take down notices to  
1269 multiple distribution companies including an organization called IMDb. IMDb is  
1270 one of the most prominent film industry organizations in the world. This severe  
1271 defamation of Koster to his industry peers is irreparable.  
1272

1273 10.This defamation has caused irreparable and severe damage to Koster's  
1274 current and future earnings.

1275  
1276 11.This defamation of Koster is openly stated in written emails that Koster  
1277 has received stating that he will be personally, financially and professionally  
1278 destroyed.

1279  
1280 12.The actions of Nguyen, Pham and VVFH have severely and irreparably  
1281 damaged Koster's reputation, income and financial stability, from which Koster,  
1282 aged 67 years old will never recover from. Their actions have also caused severe  
1283 and prolonged emotional distress and health issues for Koster who is a senior  
1284 citizen.

1285  
1286 **COUNT 3**  
1287 **(CONVERSION)**  
1288 **(KOSTER AGAINST ALL OF THE PLAINTIFFS/DEFENDANTS)**  
1289

1290 13.Koster repeats and reallege all of the foregoing paragraphs as if fully set  
1291 forth herein.

1292  
1293 14.The Plaintiffs/Defendants are guilty of conversion in reference to Koster  
1294 copyrighted property along with other solely own property that Koster owns.  
1295 The Plaintiffs/Defendants have secretly negotiated a settlement with Koster's co-  
1296 defendant, Brian Tooker. Under duress codefendant Brian Tooker sent property  
1297 owned by Koster which includes the film, interviews and other related Koster  
1298 property to the Plaintiffs/Defendants. The Plaintiffs/Defendants then instructed  
1299 Brain Tooker not to give Koster his own property.

1300  
1301 15.Nguyen's and Pham's willful conduct is more severe since Koster has  
1302 Talent Release Form Contracts with both Nguyen and Pham that made absolutely  
1303 clear the terms of their involvement in the film and their rights.

1304  
1305 16.Earlier Nguyen and Pham have sent illegal DMCA takedown copyright  
1306 notices which deprived Koster of his constitutional right of releasing his  
1307 copyrighted film.

1308  
1309 17.The actions of the Plaintiffs/Defendants have severely and irreparably  
1310 damaged Koster's reputation, income and financial stability, from which Koster,  
1311 aged 67 years old will never recover from. Their actions have also caused severe  
1312 and prolonged emotional distress and health issues for Koster who is a senior  
1313 citizen.

**COUNT 4****(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)  
(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX  
CORPORATION (VVFH))**

18.Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.

19.Nguyen, Pham and Steve Sherman of VVFH with extreme and malicious willful intent have committed multiple vicious attacks designed to traumatize Koster and in their written words, to destroy Koster personally, professionally and financially.

20.Nguyen's and Pham's conduct is that more outrageous since Koster has Talent Release Form Contracts with both Nguyen and Pham that made absolutely clear the terms of their involvement in the film and their rights.

21.Threats and severe defamation have not only been executed against Koster but also Koster's family. The threats against Koster's family was especially egregious.

22.Nguyen, Pham and Steve Sherman of VVFH strategy for the destruction of Koster is that of taking no prisoners. Koster's longtime friend and subcontractor, Brian Tooker, was mercilessly threaten, then defamed and finally maliciously sued by Nguyen, Pham, Steve Sherman of VVFH and the other plaintiffs. Brian facing a lawsuit that he didn't have the money to fight and facing the possibility of bankruptcy if he lost, was extorted in giving up Koster's property to Nguyen, Pham and Steve Sherman of VVFH and the rest of the plaintiffs.

23.The openly overt and outrageous actions by Nguyen, Pham and Steve Sherman of VVFH are made all that more damaging by their wealth and prominent positions in the community. They attacked vulnerable people who they knew have limited resources and also with Koster being 67 years old would find it difficult to defend himself from this onslaught of vicious attacks himself and his family. The actions of Nguyen, Pham and Steve Sherman of VVFH have severely and irreparably damaged Koster's reputation, income and financial stability, from which Koster, aged 67 years old will never recover from. Their actions have also caused severe and prolonged emotional distress and health issues for Koster who is a senior citizen

**COUNT 5**

**TORTIOUS INTERFERENCE**

**(KOSTER AGAINST MINH NGUYEN, NAM PHAM, RADIX  
CORPORATION (VVFH))**

24.Koster repeats and reallege all of the foregoing paragraphs as if fully set forth herein.

25.Minh Nguyen, Nam Pham and VVFH have wrongfully interfered with Koster's contractual and business relationships.

26.Minh Nguyen and Nam Pham have sent numerous bad faiths cease and desist letters to Frederick Koster while cc'd copying about 18 prominent people on it. In addition, they sent fraudulent DMCA takedown notices to three separate large corporations that Koster does business with, to stop the release of Koster's copyrighted owned film. Their false DMCA statements are perjury and greatly damaged Frederick Koster reputations and business relationships and earnings.

27.Frederick Koster had written Talent Release Form contracts with Minh Nguyen and Nam Pham expressly stating that they could not engage in any legal activities against Koster or his affiliates in reference to the copyrighted film that Koster owns.

28. Minh Nguyen, Nam Pham and VVFH have had numerous communications both oral and written to influential people severely interfering forever affecting Koster current and future business relationships.

29.Minh Nguyen, Nam Pham and VVFH conduct was highly willful, reckless, and malicious especially considering their extensive business experience. Minh Nguyen is an Intellectual Property Attorney and knows full well copyright law and the repercussions of violating it by making false claims. Koster has suffered tremendously because of their actions both financially and emotionally.

**COUNT 6**

**(KOSTER AGAINST MINH NGUYEN, NAM PHAM)**

**FRAUD**

30.Minh Nguyen states in her pleading that on behalf of Nam Pham, she sent copyright take notices to distribution platforms Vimeo, Ebay and IMDB to stop Defendants' US Registered Copyrighted film from being released. Minh Nguyen misrepresented to these companies that Defendants are not the copyright owners. Both Minh Nguyen and Nam Pham had signed Talent Release Form Contracts with Koster prohibiting them from taking any legal activities against Koster and his affiliates in reference to the film. This is copyright infringement and greatly harmed and damaged Koster financially.

31.Minh Nguyen and Nam Pham fully understood that they were under contract to Koster and that it prohibited them from taking these actions. Koster had depended on Nguyen and Pham to honor those contracts they signed and because they breached their contracts Koster has greatly suffered both financially and emotionally.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Koster pray that this Court enter a judgement in his favor on each and every claim of relief set forth above and award him relief including but not limited to:

- a. Dismissal of all of Plaintiff's claims with prejudice.
- b. Preliminary and permanent injunctive relief requiring Plaintiffs to return all the Koster property they received from Brian Tooker in their settlement agreement of this lawsuit. And that Plaintiffs submit to the Court and Frederick Koster, the settlement agreement with Brian Tooker to assure that all property is returned.
- c. Declarations from Plaintiffs stating that they did not keep copies of the said properties and they will not use or release these properties in any manner.
- d. Declarations from the Plaintiffs stating that their allegations about all of the Defendants are untrue, and that Plaintiffs will stop all negative publicity and activities against Defendants.
- e. Damages according to Proof



f. Punitive damages.

g. Attorney Fees

h. Costs of suit incurred herein; and

i. Such other relief as the Court may deem just and proper.

**DEMAND FOR A JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all issues by a jury.

Dated: June 9, 2023

*Frederick Koster*

Frederick Koster Defendant in Pro Per